IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

Crl.Rev.Pet.No. 3917 of 2007()

CRA.279/2004 of II ADDL. SESSIONS COURT, TRIVANDRUM
CC.15/1999 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KATTAKADA

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REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED

SULAIMAN, S/O ABOOBACKER,
KOVIL VILLA VEEDU,
K.P. IIND/194 KEKKINDI MURI,
MANNORKKARA VILLAGE.

BY ADV. SRI.SALIM V.S.
SRI.RAFFEEKH.K

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 15/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3917 OF 2007

Dated this the 15th day of November, 2007

O R D E R

The revision petitioner, who was the accused in C.C.No.15/99 on the file of JFCM, Kattakada for offences punishable under sections 341 and 323 IPC, challenges the conviction entered concurrently by the courts below and the modified sentence passed by the lower appellate court directing him to suffer simple imprisonment for 15 days and to pay a fine of Rs.1,000/- and on default to pay the fine, to suffer imprisonment for 15 days for the conviction under section 323 IPC as against the sentence of simple imprisonment for six months ordered by the trial court. The sentence imposed under section 341 IPC was fine of Rs.500/- and on default to pay the fine, to suffer simple imprisonment for 30 days.

2. The case of the prosecution can be summarised as follows:-

The accused was infuriated by PW1's brother questioning him for not returning the foreign goods entrusted with the accused to be handed over to PW1. On account of the said enimity, on 29.9.1998 at about 2.15 p.m. the accused wrongfully restrained

PW1 who was passing through the bylane near Mannoorkonam Village Office and voluntarily caused hurt to him by slapping him over his left ear and pulling him down causing injuries over his ear and other parts of the body. The accused has thereby committed offences punishable under sections 341 and 323 IPC.

3. On the accused pleading not guilty to the charge framed against him by the court below for the aforementioned offences, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined nine witnesses as PWs 1 to 9 and got marked four documents as Exhibits P1 to P4.

4. After the close of the prosecution evidence, the accused was questioned under section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence. He did not adduce any defence evidence.

5. The learned Magistrate after trial, as per judgment dated 27.5.04 convicted the revision petitioner of the offences referred to above and sentenced him as aforesaid. Aggrieved by the conviction and sentence, the revision petitioner preferred

Crl.Appeal No.279/04 before the Sessions Court, Thiruvananthapuram. The II Additional Sessions Judge, Thiruvananthapuram partly allowed the appeal reducing the imprisonment as aforesaid as per the judgment dated 20.3.07. Hence this revision.

6. The learned counsel appearing for the revision petitioner assailed on various grounds the conviction recorded by the courts below. The courts below have believed PWs 1 to 3 who are the occurrence witnesses who supported the prosecution. PW1 is the complainant. Going by Ext.P2 wound certificate marked through PW5 Doctor, PW1 had complaints of pain over chest, abdomen, right leg and head. There was an abrasion over the left pinna of his ear. This court, sitting in the revisional jurisdiction, will be loathe to interfere with the conviction recorded by the courts below after a careful evaluation of the oral and documentary evidence in the case. The conviction is accordingly confirmed.

7. What now survives for consideration is the question of adequacy or otherwise of the sentence imposed on the revision petitioner. The revision petitioner was not armed with any weapon when he assaulted PW1. The reason which impelled him to attack

PW1 was the questioning by PW1's brother for not returning to PW1 the foreign goods entrusted with the accused. Having regard to the facts and circumstances of the case, I do not think that the revision petitioner deserves penal servitude by way of incarceration. I am of the view that interests of justice will be adequately met by directing the revision petitioner to undergo imprisonment till the rising of the court and to pay an adequate compensation to PW1, the injured. Accordingly, the sentence imposed on the revision petitioner is set aside and instead, he shall undergo imprisonment till the rising of the court for the conviction under sections 341 and 323 IPC. He shall also pay a sum of Rs.8,000/- (Rupees eight thousand only) by way of compensation under section 357(3) Cr.P.C. to PW1, the injured. The compensation shall be paid within 45 days from today, failing which it shall be liable to be recovered as if it were fine.

This revision is disposed of as above.

(V. RAMKUMAR, JUDGE)

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